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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.M., Jr., et al., Persons Coming
Under the Juvenile Court Law.

B219472
(Los Angeles County
Super. Ct. No. CK76693)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

A.M.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Valerie L. Skeba, Juvenile Court Referee. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel, for Respondent.

INTRODUCTION

A.M. (father) appeals an order of the juvenile court pursuant to Welfare and Institutions Code section 300¹ asserting jurisdiction over his three children, A. Jr., Ashley, and Richard (collectively, children). We conclude that, under the standard of review we must apply, there was substantial evidence to support the juvenile court's implied finding that heroin was kept in the family home in a place accessible to children. We therefore affirm.

BACKGROUND

A. Detention

On March 24, 2009, the United States Drug Enforcement Agency (DEA) and the Los Angeles Sheriff's Department (LASD) requested that the Multi-Agency Response Team (MART) of the Los Angeles County Department of Children and Family Services (DCFS)² investigate and assess allegations of child endangerment in 37 homes linked to a large heroin smuggling and distribution operation based in Mexico and involving at least 11 criminal street gangs. The request came after a seven-month investigation by DEA and LASD involving undercover operations and wiretap surveillance, which resulted in an indictment against 48 people on federal drug and conspiracy charges and the seizure of approximately \$2 million worth of heroin.

Father and mother were among those indicted. Father was arrested on Friday, March 20, 2009, en route to Mexico. When interviewed in custody by DCFS, father at first claimed he was arrested by mistake, but then admitted that the family home had been used as a drop-off and pick-up point for heroin. Father was paid for each drop off or pick

¹ All statutory references are to the Welfare and Institutions Code.

² MART's mission is to collaborate with law enforcement agencies to provide specialized services to children in cases involving the manufacture of narcotics (e.g., meth labs) or "high-profile large scale narcotics sales, use or trafficking"

up, but insisted that he was merely “lending his house” to the traffickers. He claimed that he and mother had put a stop to the practice three weeks earlier because they felt they were getting “deep” in the business.

Mother was arrested four days later in the family home. One of the children, three-year old A. Jr., was present. Mother told DCFS that her other two children, one-year old Ashley and two-month old Richard, were in the San Diego area with their paternal uncle, S. Mother admitted to DCFS that she and father had been selling drugs out of the family home.

DCFS contacted the children’s paternal uncle, who refused to disclose the whereabouts of Ashley and Richard. DCFS told paternal uncle that, if he did not wish to disclose their whereabouts, he could bring Ashley and Richard to the Montebello Police Department. DCFS informed paternal uncle that a warrant to detain the children would be sought if he did not permit DCFS to assess their welfare. Paternal uncle stated that he would “see” if he could make it. Later that night, paternal uncle arrived at the Montebello Police Department with Ashley and Richard. DCFS took the children into protective custody. When paternal uncle protested, DCFS explained that paternal uncle could provide his contact information and undergo a background check to determine whether the children might be placed with him. Paternal uncle responded that he would “think about it.”

The children appeared to be healthy, and there were no visible signs of abuse. DCFS nevertheless concluded that, based on parents’ admissions that they were trafficking heroin out of their home, the children were at “‘very high risk’ for future abuse and/or neglect.”

DCFS filed a petition pursuant to section 300, subdivision (b), alleging that parents had “created a detrimental and endangering home environment” in that they “possessed illicit drugs including heroin in the children’s home within access of the children.” DCFS further alleged that parents had “exposed the children to illicit drug trafficking in the children’s home in the children’s presence,” endangering children’s

health, safety and well being and placing children “at risk of physical and emotional harm, damage and danger.”

Parents were in federal custody and were not present at the detention hearing. The juvenile court appointed counsel for parents, and ordered children detained.

B. Jurisdiction

In May 2009, DCFS reported that parents remained in federal custody in San Bernardino County. Mother had no criminal record; father had been arrested on an unspecified conspiracy charge earlier in 2009.

Mother told DCFS that she and father were involved in narcotics sales for approximately three months. Father had told mother that they were to hold and deliver drugs, in exchange for which their rent would be paid. Mother agreed because they needed extra money. She claimed the drugs were stored away from the children; that she had never become involved in the delivery of the drugs; and that she had never met the people who delivered the drugs to father. Mother denied that she or father abused drugs. Mother told DCFS that she had a sister who also was incarcerated on drug charges.

Father told DCFS that he was born in Oaxaca, Mexico. He came to the United States in 2000 and worked as a mechanic. He had been approached by “unknown men” with the opportunity to make extra money. He had agreed to hold and deliver heroin, and he had done so for three months. Father said he was paid \$400 per month. Father denied that he or mother ever used heroin. He said he stored the heroin “on the top shelf of a dresser drawer” in the living room of the family’s one bedroom apartment. Contrary to father’s earlier statement that a “friend” who resided in the home was responsible for delivering the drugs, father told DCFS that only he, mother and children resided in the home. DCFS noted that the drug operation with which parents were involved was based in Oaxaca, Mexico, where father was born.

The juvenile court set the matter for a contested adjudication hearing. At a progress hearing, over DCFS’s objection, the juvenile court released the children to the care of their paternal uncle, S.

Prior to the contested hearing, DCFS submitted to the juvenile court the federal indictment charging parents with conspiracy to distribute heroin. As set forth in the indictment, parents' role in the conspiracy was to process and package the heroin for distribution, to provide packaged heroin to others for distribution, and to distribute packaged heroin in Los Angeles and Santa Barbara. In addition, mother and certain codefendants "would coordinate information regarding law enforcement activities in order to thwart the detection of the conspiracy's heroin distribution activities by law enforcement." Specifically, on November 25, 2008, father had a telephone conversation in which he arranged to split the profits from the distribution of high quality heroin with one codefendant. On December 5, 2008, father had a telephone conversation in which he arranged to obtain heroin from another codefendant. On January 20, 2009, mother had a telephone conversation in which she told a codefendant that parents were on their way to deliver heroin to an unindicted coconspirator, and that afterward parents would come to the codefendant's house to collect more heroin. On January 26, 2009, parents had a telephone conversation in which they told a codefendant that they were nearly finished preparing a quantity of heroin for distribution. On March 5, 2009, father had a telephone conversation in which he informed a codefendant that father was in Mexico, and that vehicles that the codefendant believed were following him likely belonged to law enforcement. On March 24, 2009, mother discussed with a codefendant on the telephone the arrests of father and other codefendants, and whether one of the codefendants had been preparing heroin for distribution at the time of her arrest. All of these telephone conversations allegedly were conducted in coded language.

Other than parents' statements to DCFS, no evidence was presented that narcotics or narcotics paraphernalia were found in the family home when mother was arrested there, or that any heroin had been packaged or processed in the family home, or that parents' other alleged drug trafficking activities were conducted in the family home or in children's presence. DCFS submitted police incident reports regarding search warrants executed at addresses on Pannes Avenue in Compton, Balfour Street in Pico Rivera, and

Dempster Avenue in Downey, but none of these reports concerned parents or their family home.

DCFS reported that, according to federal prosecutors, mother was expected to enter a guilty plea in federal court in late July 2009 and would be sentenced 3 or 4 months later. Father was expected to go to trial in December 2009.

Federal authorities did not permit parents to attend the contested jurisdictional hearing, but they were represented by counsel. The juvenile court received into evidence the reports submitted by DCFS, and found that there was substantial danger to children's physical and emotional health and safety, as alleged in the petition. The juvenile court made disposition orders not challenged on this appeal. Father timely appealed.

DISCUSSION

A. Applicable Principles and Standard of Review

Father challenges the sufficiency of the evidence supporting the juvenile court's jurisdictional finding under section 300, subdivision (b). Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if, inter alia, there is a substantial risk a child will suffer serious physical harm or illness "as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child" "A jurisdictional finding under section 300, subdivision (b) requires: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the child, or a 'substantial risk' of such harm or illness." [Citations.] " (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) The standard of proof at a jurisdictional hearing is a preponderance of the evidence. (§ 355, subd. (a); Cal. Rules of Court, rule 5.684(f); *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.)

"In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor

of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451; see also *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) Thus, if there is such evidence supporting the juvenile court's finding, we are required to affirm the finding. We do not reevaluate the evidence.

B. Application

Father argues, in essence, that parents' admitted involvement in drug sales did not, without more, constitute substantial evidence that children were at a substantial risk of serious physical harm. But in this case, parents admitted that they kept heroin in the household, and there was substantial evidence to support the inference that the heroin was accessible to children.

The petition alleged that children were endangered because, inter alia, parents “possessed illicit drugs including heroin in the children's home within access of the children.” Father admitted to DCFS that parents kept heroin in the household, on the top shelf of a dresser in the living room of the family's one bedroom apartment. Father did not state that the heroin was kept in a safe or strongbox, or that other precautions were taken to prevent children's access. Father did not describe how the heroin was packaged, but mother told DCFS in her first interview that the drugs were in small baggies.³ Father told DCFS that parents were “lending” their apartment to commercial heroin distributors as a drop-off and pick-up point.

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Mother first told DCFS that the drugs consisted of a white powdery substance or a crystal-like substance. Mother later told DCFS that the drugs were “black in color.”

The juvenile court also had before it the indictment in parents' federal criminal case.⁴ The indictment indicated that parents were active participants in an international heroin smuggling ring, and that their involvement was far more extensive than merely providing a drop-off and pick-up point. The indictment alleged that parents were involved for at least five months in processing and packaging heroin for distribution, providing packaged heroin to others for distribution, and in distributing packaged heroin in Los Angeles and Santa Barbara. Based on parents' statements and the allegations in the indictment, the juvenile court could infer that a relatively large quantity of heroin passed through parents' home consistently over a period of months, and that the heroin was not locked away or packaged in such a way that it was inaccessible to children.

When children were detained, A. Jr. was three years old, healthy and energetic. The social worker observed A. Jr. "actively running around the office" and playing. The juvenile court reasonably could infer that an active three-year old boy in a one bedroom apartment could access the top of a dresser in the living room, for example, by climbing on a chair, or table, or sofa, or some other piece of furniture. The juvenile court could infer further that there was a substantial risk that A. Jr. might ingest or otherwise expose himself or his siblings to the heroin stored there. The juvenile court was not required to assume that parents could keep a constant vigil on both the drugs and A. Jr., particularly as they had two other small children to care for and their livelihoods to earn.

There was thus substantial evidence to support an implied finding that the heroin was accessible by A. Jr. and, through him, the other children. A parent puts his or her children at a substantial risk of harm by keeping narcotics in a place accessible to the children. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 825.) Indeed, evidence that heroin was kept in places accessible to a small child has been held sufficient to sustain a conviction for misdemeanor child endangerment under Penal Code section 273a, subdivision (b). (*People v. Perez* (2008) 164 Cal.App.4th 1462, 1472-1474 [bindles of

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Father does not argue that the juvenile court improperly considered the indictment. (See § 355, subds. (b), (c).)

heroin and syringes found in places accessible to four-year old child]; see also *People v. Toney* (1999) 76 Cal.App.4th 618, 622-623 [storage of chemicals used to manufacture methamphetamine in home with six-year old child sufficient to support conviction for felony child endangerment (Pen. Code, § 273a, subd. (a))]; *People v. Odom* (1991) 226 Cal.App.3d 1028, 1034 [storing chemical precursors of methamphetamine in home with seven and nine-year old children sufficient to support conviction for felony child endangerment].) It would be anomalous to hold that such evidence was sufficient to impose criminal liability on a parent for placing a child “in a situation where his or her person or health may be endangered” under Penal Code section 273a, subdivision (b), but not sufficient to show that a child was placed at a substantial risk of physical harm under section 300, subdivision (b).

Because substantial evidence supported the juvenile court’s implied finding that the presence of heroin in the home posed a substantial risk of harm to children, the juvenile court properly exercised its jurisdiction under section 300, subdivision (b). (See *In re Steve W.* (1990) 217 Cal.App.3d 10, 27 [“Implicit in the court’s finding that Steve was a dependent child pursuant to section 300, subdivisions (a), (b) and (j), was the finding that the factual allegations were sufficient under these sections”].) We need not determine whether the exercise of jurisdiction was warranted on any other basis. (See *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-76 [when one basis for jurisdiction is supported by substantial evidence, reviewing court does not need to consider sufficiency of evidence to support any other basis alleged in the petition]; see also *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

Father argues that there was no evidence that the children actually had been harmed. Although true, that fact is not dispositive. Section 300, subdivision (b) authorizes the juvenile court to exercise jurisdiction if it finds that a child is exposed to a substantial *risk* of harm. The juvenile court was not prohibited from asserting jurisdiction merely because the harm had not yet materialized. “Juvenile dependency law in general does not require a child to be actually harmed before [DCFS] and the courts may

intervene.” (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) “‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ [Citation.]” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104, quoting *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004; see also *In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196; *In re Michael S.* (1981) 127 Cal.App.3d 348, 357-358.)

Father cites *In re David M.* (2005) 134 Cal.App.4th 822, *In re Jeannette S.* (1979) 94 Cal.App.3d 52 and *In re W.O.* (1979) 88 Cal.App.3d 906, for the proposition that “drugs sales, possession or use, without a nexus to harm, is simply insufficient to support a jurisdictional finding under section 300, subdivision (b).” Those decisions are inapposite.

In *In re David M.*, the evidence showed that a mother had been a marijuana abuser several years prior to the jurisdictional hearing, but in the interim she had cared for an older child who was healthy and loved, and she had provided 18 negative drug tests since her infant child was detained. (*In re David M.*, *supra*, 134 Cal.App.4th at pp. 829-832.) In *In re Jeannette S.*, the court opined in dicta that evidence that a father lived in crowded conditions and was an alcoholic was “insufficient, standing alone, to support a finding of dependence.” (*In re Jeannette S.*, *supra*, 94 Cal.App.3d at p. 59, fn. 2.) In neither of these cases was it alleged or proved that the parents stored illicit drugs in the family home in a manner such that the drugs were accessible to the children.

In *In re W.O.*, *supra*, 88 Cal.App.3d 906, the parents possessed cocaine and marijuana in their residence. (*Id.* at p. 911.) It was undisputed that the cocaine was inaccessible to the children, but the juvenile court had found that there was a “‘remote possibility’” that the marijuana—kept in a box in a kitchen drawer—was accessible to a two-year old child. (*Id.* at p. 910.) A divided Court of Appeal held that evidence of a “‘remote possibility’” of harm was insufficient to justify a jurisdictional finding under section 300, subdivision (a) or removing the children from their parents’ custody. (*Id.* at pp. 909, 910-911.) Unlike *In re W.O.*, this case involved heroin—a dangerous narcotic—kept on a dresser in the living room in quantities intended for commercial distribution. It did not involve marijuana, presumably kept for personal use, stored inside a box that was

in turn placed inside a kitchen drawer. Accordingly, the evidence supports the conclusion that both the risk of harm to children and the likelihood that the harm would eventuate were greater in this case than *In re W.O.* The juvenile court in this case did not characterize the risk of harm as a mere remote possibility—to the contrary, the juvenile court made an implied finding that, in the circumstances here, the risk of harm was substantial. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825 [“the trial court could find a substantial risk of serious physical harm in the fact that [child’s] mother created the danger that [child] would ingest hazardous drugs”].) Substantial evidence supported the juvenile court’s exercise of jurisdiction.

DISPOSITION

The order is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.